

**SUBSIDIES ENFORCEMENT  
ANNUAL REPORT TO THE CONGRESS**

**Joint Report of the  
Office of the United States Trade Representative  
And the U.S. Department of Commerce  
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## TABLE OF CONTENTS

<b>Executive Summary .....</b>	<b>i</b>
<b>Introduction .....</b>	<b>1</b>
<b>Multilateral Initiatives.....</b>	<b>2</b>
A. WTO Negotiations .....	2
B. Steel: Multilateral Efforts to Address Market-Distorting Practices.....	6
<b>Monitoring and Enforcement .....</b>	<b>8</b>
A. Advocacy Efforts .....	8
B. China.....	11
C. WTO Dispute Settlement and Other CVD Cases of Significance To Subsidies Disciplines .....	14
D. WTO Subsidies Committee.....	20
E. U.S. Monitoring of Subsidy-Related Commitments.....	25
<b>Conclusion.....</b>	<b>26</b>

## **EXECUTIVE SUMMARY**

This report describes the efforts by the Office of the U.S. Trade Representative (USTR) and the U.S. Department of Commerce (Commerce), in close cooperation with other Executive Branch agencies, to monitor and challenge unfair foreign government subsidy practices in 2008. Section 281(f)(4) of the Uruguay Round Agreements Act mandates that USTR and Commerce submit a joint report to the Congress each year that describes the Administration's subsidy monitoring and enforcement activities throughout the previous year. This report is the fourteenth annual report submitted to the Congress.

In 2008, American workers and industries faced a significant deterioration in economic conditions. In response to the sharp economic downturn, many governments worldwide, including the United States, introduced or announced measures to address these new challenges. Some of these measures were necessary to confront industry issues stemming from the financial crisis. The United States is committed to ensuring that all WTO Members adhere to their obligations under the applicable agreements of the World Trade Organization (WTO) and, when measures distort trade in goods and adversely affect U.S. interests, exercising its rights as necessary under those agreements.

The principal tool available to WTO Members to remedy harmful subsidy practices worldwide is the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement, SCM Agreement or Agreement), which establishes multilateral disciplines on subsidies. In the WTO, the Subsidies Committee serves as the primary forum for WTO Members' subsidy-related work and discussions. The United States actively participates in the Subsidies Committee to ensure the continued effectiveness of the Subsidies Agreement. More generally, the United States uses the provisions of the Subsidies Agreement to deter or remedy harm caused to U.S. workers and industries from distortive subsidies through bilateral contacts, multilateral pressure and, where justified, WTO dispute settlement proceedings.

### **Doha Development Agenda**

At the Doha Ministerial Conference in 2001, which launched the Doha Development Agenda (DDA), Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Subsidies Agreement and the WTO Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement, or AD Agreement) and to address trade-distorting practices that often give rise to countervailing duty and antidumping duty proceedings. This agreement – referred to hereafter as the Rules Mandate – also calls for clarified and improved WTO disciplines on fisheries subsidies.

The existing WTO disciplines on subsidies prohibit only two types of subsidies: subsidies contingent upon export performance and subsidies contingent upon the use of domestic over imported goods. However, other permitted subsidies can also distort markets and international trade patterns. The specific language of the Rules Mandate is particularly important because it provides an avenue to address these other practices and to inform the discussions of trade remedies in a constructive manner. Moreover, it provides an avenue to take up the negotiating objectives that Congress had previously laid out in the Trade Act of 2002 and other subsidy concerns that affect key sectors of the U.S. economy. Under this mandate, the United States has continued to pursue an aggressive, affirmative agenda, aimed at strengthening the rules relating to, and addressing the underlying causes of, unfair trade practices.

Another important component of the Rules mandate is the work on disciplines specifically covering fisheries subsidies. The depleted state of the world's fisheries stock is a major economic and environmental issue. Fisheries subsidies are a significant part of the problem. The inclusion of fisheries subsidies in the Rules negotiations represents a significant opportunity for all countries to advance simultaneously the goals of trade liberalization, environmental protection, and economic development.

In the seven years since the launching of the DDA, there has been a considerable amount of discussion and negotiation on numerous subsidies and countervailing duty (CVD) proposals tabled in the Negotiating Group on Rules (Rules Group). In November 2007, the Chairman of the Rules Group issued draft consolidated texts on antidumping and on subsidies and countervailing measures, including fisheries subsidies (2007 text). The United States stated its disappointment with important aspects of the draft, as it did little to strengthen the current subsidy disciplines. Throughout 2008, the United States pursued a number of issues in order to strengthen the 2007 text.

On fisheries subsidies, the Rules Group met several times in the first part of 2008 to discuss the Chairman's 2007 text. The text would prohibit a broad range of subsidies that contribute to fleet overcapacity and overfishing, and would specifically prohibit subsidies that affect fishing of "overfished" stocks. The text also would provide for a limited list of general exceptions to the prohibitions available to all Members and additional exceptions for developing countries.

In 2008, the United States and other Friends of Fish strongly supported the level of ambition in the Chairman's 2007 text and contributed extensively to the technical discussion of its provisions. Japan, Korea, Chinese Taipei and the European Union continued to object to the scope of the Chairman's prohibition, particularly with respect to subsidies to cover operating costs such as fuel. Significantly, in 2008, India, Indonesia and China proposed very extensive special and differential treatment for developing countries that would virtually exempt developing country fishing from any

significant new disciplines. The United States and other Friends of Fish (including some developing countries) strongly resisted this proposal. In July 2008, the United States, with Australia and New Zealand, submitted a broad overview paper that reviewed progress in the negotiations to date and reaffirmed their commitment to achieve an ambitious and effective fisheries subsidies agreement. Also in July, Argentina, Chile, Colombia, Ecuador, Mexico and Peru submitted a complementary paper from a developing country perspective, supporting a more balanced approach to developing country exceptions than that put forward by India, Indonesia and China.

After Ministers reached an impasse in July 2008 in their efforts to agree on a way to advance the DDA in other areas, work in the Rules Group remained relatively quiet until December 18, 2008, when the Chair issued *New Draft Consolidated Chair Texts of the AD and SCM Agreements* (2008 document). In a cover note to the 2008 document, the Chair noted that this new document reflected a “bottom-up approach” and included new draft language on AD and subsidies/CVD issues only in those areas where some degree of convergence among the Members appeared to exist. With respect to more contentious issues for which the Chair felt that he had no basis to propose compromise solutions or drafting language, the Chair simply identified such issues in brackets, along with a general summary of the range of Members’ views regarding those issues.

For fisheries subsidies, rather than providing new draft language, the 2008 document provides only a “roadmap” for further discussion. While reiterating the Rules Group mandate to strengthen subsidy disciplines in the fishery sector, the Chair stated that the outstanding differences among Members on fisheries subsidies went to the very concepts and structure of the rules. Therefore, the Chairman’s roadmap sets out the key questions that the Rules Group needs to address in order to reconcile the differing approaches and advance its work in this area.

In his cover note to the 2008 document, the Chair noted that he is planning an intensive program of meetings starting in early 2009. The Chair also has made clear that all issues remain on the table. Throughout any future discussions, the United States will continue to pursue an aggressive affirmative agenda consistent with the negotiating objective established by Congress to preserve the effectiveness of the trade remedy rules. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome and work to further improve and refine many of the provisions included in the Chairman’s 2007 text.

## **China**

USTR and Commerce continued to confront aggressively a wide range of trade-distorting subsidies in China in 2008, through both multilateral and bilateral actions. Highlights include the filing of a second WTO subsidies dispute against a wide-range of central and sub-central government measures that appear to be contingent upon export performance, and the ongoing application by Commerce of the U.S. CVD law to imports

of subsidized Chinese goods.

In 2008, the United States continued to press China to comply fully with its obligations to eliminate all subsidies prohibited by WTO rules and to provide a full accounting of the subsidies maintained by all levels of government. After receiving little or no information in response to U.S. questioning, USTR and Commerce compiled hundreds of pages of Chinese language source documentation that appears to confirm that China has recently implemented and continues to maintain numerous prohibited export subsidies, primarily focused on promoting Chinese brands around the world. (These subsidies are distinct from the prohibited tax subsidies that were subject to the United States' first WTO subsidies case against China, which, as reported last year, was favorably resolved in late 2007.) Many of these subsidies appear to be provided by provincial and local governments seeking to implement central government directives found in two umbrella programs: the "World Top Brand" program and the "Famous Export Brand" program. The United States also developed information regarding several other export subsidies that appear to be provided by sub-central governments separately from the two brand programs.

Efforts by the United States to resolve these matters with China, both through high-level bilateral engagement and multilateral efforts at the WTO were not successful. Therefore, in December 2008, the United States began WTO dispute settlement proceedings. In 2009, the United States will continue to dig deeper into the development and implementation of China's industrial policies to ensure that China complies with its obligations under the Subsidies Agreement.

As noted in last year's report, Commerce's 2007 decision to apply the CVD law – the U.S. anti-subsidy law – to imports from China represented the first time that the U.S. CVD law had been applied to imports from a non-market economy (NME) country. The decision altered a 23-year old policy of not applying the CVD law to NME countries, and reflected the assessment that reforms to China's economy in recent years had removed the obstacles to applying the CVD law that were present in the "Soviet era economies" at issue when Commerce first declined to apply the CVD law to NMEs in the 1980s. Applying the U.S. CVD law to potentially injurious subsidized imports from China demonstrates the U.S. Government's commitment to leveling the playing field for American companies, workers and farmers.

During 2008, Commerce completed CVD investigations of imports from China of circular and rectangular steel pipe, laminated woven sacks, off-the-road tires, flexible magnets, thermal paper and sodium nitrite, and initiated additional investigations of imports of stainless steel pressure pipe, circular line pipe, citric acid, kitchen racks, and lawn groomers from China. The subsidies Commerce investigated in these cases included preferential policy loans, income tax and Value Added Tax (VAT) exemptions and reductions, the provision of goods and services on non-commercial terms, and a variety of provincial and local government subsidies. Given some of the unique features

of China's economy, a number of the subsidies investigated in these cases presented novel and complex issues, from both a legal and methodological perspective.

In September 2008, China requested WTO dispute settlement consultations with the United States regarding Commerce's final determinations in the CVD investigations of circular steel pipe, rectangular pipe, off-the-road tires and laminated woven sacks. Consultations were held in Geneva in November 2008, and China requested the establishment of a WTO panel in December 2008.

## **Steel**

The United States was very active this past year in multilateral, regional, and bilateral efforts that focused on the need for market-driven rationalization of the world's excess, inefficient steelmaking capacity. Throughout 2008, the United States continued to play a key role in international efforts to address the structural issues that historically have plagued the global steel industry, particularly with respect to the frequency and magnitude of market-distorting government intervention in this market. The primary goal of these efforts has been to seek lasting solutions to the long-term problems in this industry, including oversupply, unfair trade competition and trade remedy responses. The United States participated in the North American Steel Trade Committee (NASTC) and the OECD Steel Committee to promote the understanding of the industry's structural problems and approaches by which they can be addressed. In addition, the United States engaged the Chinese government in the U.S. – China Steel Dialogue, established under the auspices of the U.S.-China Joint Commission on Commerce and Trade (JCCT), on a variety of issues, including the problems that subsidies and other types of government intervention in the steel sector can cause in world steel markets.

## **Conclusion**

Through its subsidies enforcement program, the U.S. Government is committed to identifying and challenging those unfair foreign government practices that distort international trade and thereby threaten or cause harm to American workers and companies, whether domestically or in foreign markets. Where possible, we will work to resolve these issues through advocacy, negotiation or bilateral or multilateral contacts. As we have demonstrated, however, if our interests cannot be adequately addressed through advocacy and negotiation, we will not refrain from initiating WTO dispute settlement proceedings. In 2009, the United States will continue to vigorously enforce the U.S. countervailing duty law to protect the interests of American industries and workers unfairly harmed by subsidized imports, and, when challenged, it will defend its countervailing duty determinations at the WTO and in U.S. courts. Only a dynamic and competitive global economy that remains free of the most trade-distorting types of subsidies will ensure that U.S. industries, workers and consumers enjoy the benefits that an open and competitive global economy can offer.

## INTRODUCTION

The Subsidies Agreement establishes multilateral disciplines on the use of subsidies and provides mechanisms for challenging government measures that contravene these disciplines. These disciplines are enforceable through binding dispute settlement, which specifies strict time lines for bringing an offending practice into conformity with the pertinent obligation. The remedies in such circumstances can include the withdrawal or modification of a subsidy, or the elimination of a subsidy's adverse effects. In addition, the Subsidies Agreement sets forth rules and procedures to govern the application of countervailing duty (CVD) measures by WTO Members with respect to subsidized imports.

The Subsidies Agreement nominally divides subsidy practices into three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted non-actionable (green light) subsidies. Export subsidies and import substitution subsidies are prohibited. All other subsidies are permitted, but are actionable (through CVD or dispute settlement action) if they are (i) "specific", *i.e.*, limited to a firm, industry or group thereof within the territory of a WTO Member and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another WTO Member. With the expiration of the Agreement's provisions on green light subsidies, at present, the only non-actionable subsidies are those that are not specific, as defined above.<sup>1</sup>

U.S. trade policy responses to the problems associated with foreign subsidized competition provide USTR and Commerce with both unique and complementary roles. In general, it is USTR's role to coordinate the development and implementation of overall U.S. trade policy with respect to subsidy matters, represent the United States in the WTO, including its Subsidies Committee, and chair the interagency process on matters of trade policy.

The role of Commerce, through the International Trade Administration's Import Administration (IA), is to enforce the CVD law, monitor the subsidy practices of other countries, and provide the technical expertise needed to analyze and understand the impact of foreign subsidies on U.S. commerce. Within IA, subsidy monitoring and

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<sup>1</sup> Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would be treated as non-actionable subsidies. In addition, Article 6.1 of the Agreement provided that certain other subsidies (*e.g.*, subsidies to cover a firm's operating losses), referred to as dark amber subsidies, could be presumed to cause serious prejudice. If such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had *not* resulted from the subsidy. However, these provisions expired on January 1, 2000, because a consensus could not be reached among WTO Members on whether to extend them.



enforcement activities are carried out by the Subsidies Enforcement Office (SEO). (See Attachments 1, which contains a description of the SEO.) IA will also provide assistance and advice to interested U.S. parties concerning the remedies available under the Subsidies Agreement and the procedures relating to these remedies and, where warranted, recommend action to USTR.

Among the joint responsibilities assigned to USTR and Commerce, as set forth in section 281(f)(4) of the Uruguay Round Agreements Act (URAA), is the submission of an annual report to the Congress describing the U.S. monitoring and enforcement activities throughout the previous year. This is the fourteenth annual report to the Congress.

## **MULTILATERAL INITIATIVES**

### **A. WTO Negotiations**

#### **1. Introduction**

At the Doha Ministerial Conference in 2001 -- which launched the Doha Development Agenda (DDA) -- Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Subsidies Agreement and the WTO Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement, or AD Agreement) and to address trade-distorting practices that often give rise to countervailing duty and antidumping duty proceedings. This agreement -- hereafter referred to as the Rules Mandate -- also calls for clarified and improved WTO disciplines on fisheries subsidies. Under this mandate, in 2008, the United States continued to pursue an aggressive, affirmative agenda, aimed at strengthening the rules and addressing the underlying causes of unfair trade practices.

The existing WTO disciplines on subsidies prohibit only two types of subsidies: subsidies contingent upon export performance (export subsidies) and subsidies contingent upon the use of domestic over imported goods (import substitution subsidies). However, some other permitted subsidies can be just as distortive. The specific language of the mandate agreed to at the Doha Ministerial Conference is particularly important because it provides an avenue to address these other practices and to inform the discussions of trade remedies in a constructive manner. Moreover, it provides an avenue to take up the negotiating objectives that Congress had previously laid out in the Trade Act of 2002, as well as other subsidy concerns that affect key sectors of the U.S. economy.

Another important component of the DDA is the work on disciplines specifically related to fisheries subsidies, a subject that is included as part of the Rules Mandate. The U.S. position is that the depleted state of the world's fisheries stock is a major economic and environmental concern, and that subsidies that contribute to overcapacity and overfishing, or that have other trade-distorting effects, are a significant part of the problem. The inclusion of fisheries subsidies in the Rules Mandate represents a significant

opportunity for all countries to advance simultaneously the goals of trade liberalization, environmental protection, and economic development.

## **2. Rules Group Background**

The Negotiating Group on Rules (Rules Group) has based its work primarily on written submissions from Members, organizing its work into the following categories: (1) AD (often including issues that are relevant to CVD remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements. Since the Rules Group began its work in 2002, Members have submitted over 200 formal papers and over 150 elaborated informal proposals to the Group.<sup>2</sup>

At the Hong Kong Ministerial Conference in December 2005, Ministers directed the Rules Group to intensify and accelerate the negotiating process in all areas of its mandate, on the basis of detailed textual proposals, and to complete the process of analyzing proposals as soon as possible. On fisheries subsidies, Ministers acknowledged broad agreement on the need for stronger rules, including a prohibition of the most harmful subsidies contributing to overcapacity and overfishing, and appropriate and effective special and differential treatment for developing country Members. Ministers also directed the Chairman of the Rules Group to prepare consolidated texts of the AD and SCM Agreements, taking account of progress in other areas of the negotiations.

In November 2007, the Chairman of the Rules Group, Ambassador Guillermo Valles Galmes of Uruguay, issued *Draft Consolidated Chair Texts of the AD and SCM Agreements* (2007 text).<sup>3</sup> The subsidies and CVD-related text was in the form of proposed revisions to the existing SCM Agreement, and covered a broad range of subsidy and CVD-related issues, including: subsidy calculation methodologies, “dual pricing” practices, state-owned banking practices, export credits and benefit pass-through.

Absent from the 2007 text, however, were any proposed changes to the CVD provisions corresponding to proposals that were incorporated into the Chairman’s text for the AD Agreement on issues of common relevance between the two agreements. In the cover note to the text, Chairman Valles noted that there was broad acceptance that changes to the antidumping rules should, where relevant and appropriate, also be made to the rules regarding countervailing measures.

Shortly after the text was issued, the United States publicly stated that it was very disappointed with important aspects of the 2007 text, but believed that it provided a basis for further negotiations.

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<sup>2</sup> Both sets of Rules papers are publicly available on the WTO website (<http://wto.org>): the formal papers may be found using the “TN/RL/W” document prefix, and the elaborated informal proposals may be found using the “TN/RL/GEN” prefix.

<sup>3</sup> TN/RL/W/213 (November 30, 2007).

### 3. Major Issues and Developments in 2008

#### *a. Subsidies/CVDs:*

The Chairman's 2007 text makes only limited changes to the existing SCM Agreement, but does include important clarifications to the existing rules. For example, the Chairman's 2007 text firmly establishes that the amount of a subsidy should be calculated based upon the "benefit-to-recipient" approach, an approach long advocated by the United States. In principle, these clarifications have not been controversial, although the United States and others suggested several refinements. The provisions in the Chairman's text on subsidy calculation methodologies – derived from a U.S. proposal – largely represent a technical advancement in the rules that elaborate upon important principles for the measurement of subsidy benefits. The issues of dual pricing and state-owned banking practices were discussed at several meetings in 2008, during which Members expressed a wide range of positions. Also in 2008, the Chairman's 2007 text on export credits was reviewed in detail and alternative text was considered. However, many Members, including the United States, expressed serious reservations regarding the provisions in the Chairman's proposed text on export credits, because it would significantly change the existing rules that have been developed over time and that generally have functioned well.

Members' proposals that were not included in the Chairman's 2007 text but that were discussed in 2008 included: appropriate "benchmarks" for use in subsidy determinations (Brazil); redefining the concept of "export competitiveness" in the SCM Agreement (India); amending the rules on duty drawback (India); and the definition of *de facto* export subsidies and "withdrawal" of subsidies found to be prohibited (Australia).

As a general matter, in 2008, the United States continued to express concern that the Chairman's 2007 text would result in little strengthening of the current general subsidy disciplines, despite the Doha Rules negotiating mandate to clarify and improve the rules and address trade-distorting practices. The United States also has strongly advocated that the process of determining which provisions of the AD 2007 draft text might be appropriate for inclusion in the SCM Agreement start as soon as possible, given that each potential change would need to be carefully considered.

#### *b. Fisheries Subsidies:*

As part of the Doha mandate, Members have committed to negotiations that "aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries." The United States views the negotiations on fishery subsidies as a groundbreaking opportunity for the WTO to show that trade liberalization can benefit the environment and contribute to sustainable development as well as address traditional trade concerns. The United States has played a major role in advancing the discussion of fisheries subsidies reform in the Rules Group, working closely with a broad coalition of developed and developing countries, including Argentina, Australia, Chile, Ecuador, Iceland, New Zealand and Peru (collectively known as

the “Friends of Fish”), as well as Brazil.

In the first part of 2008, the Rules Group had several meetings to discuss the Chairman’s 2007 text on fisheries subsidies, which would be an annex to the SCM Agreement. The text prohibits a broad range of subsidies that contribute to fleet overcapacity and overfishing in wild marine capture fisheries, as well as subsidies that affect fishing of “overfished” stocks. The text also includes a limited list of general exceptions to these prohibitions that are available to all Members, as well as exceptions for developing countries. Subsidies qualifying under either set of exceptions would remain actionable under the existing provisions of the SCM Agreement. In addition, the text requires Members not to cause depletion of or harm to, or create overcapacity with respect to, the fisheries resources of another Member. Finally, the text contains provisions concerning fisheries management systems, peer review, notification and surveillance of Members’ fisheries subsidies, dispute settlement, and transition arrangements.

The United States and other Friends of Fish supported the level of ambition in the Chairman’s text and contributed extensively to the technical discussion of its provisions. Japan, Korea, Chinese Taipei and the European Union continued to object to the scope of the Chairman’s prohibition, particularly with respect to subsidies to cover operating costs such as fuel. However, the negotiations made progress in several areas, including widespread agreement on the importance of a general discipline not to cause overcapacity or harm to the fisheries resources of other Members, provisions on fisheries management, treatment of arrangements for developed country access to the fishing waters of developing countries, and the need for improved transparency provisions, including enhanced notification and meaningful surveillance.

The issue of appropriate and effective treatment for developing countries was an important focus of the negotiations and continued to prove very difficult. The Chairman’s text provided considerable flexibility for subsistence level and small scale developing country fishing. However, India, joined by Indonesia, introduced a proposal for much broader exceptions that could cover not only subsistence and small scale fishing but also developing country industrial fishing. Specifically, the proposal would exempt quite large developing country fishing vessels (up to 82 feet long) from meaningful disciplines. A revised proposal, joined by China, would extend the exceptions so that they would cover virtually all developing country fishing, including even larger fishing vessels in distant water industrial fleets. The United States and other Friends of Fish (including some developing countries) strongly resisted this proposal.

In July 2008, the United States, along with Australia and New Zealand, submitted a paper that provided a broad overview of progress in the negotiations to date and that reaffirmed their commitment to achieving an ambitious and effective fisheries subsidies agreement. Also in July, Argentina, Chile, Colombia, Ecuador, Mexico and Peru submitted a complementary paper from a developing country perspective, supporting a more balanced approach to developing country exceptions than that put forward by India, Indonesia and China.

### *c. Chairman's New 2008 Document*

After Ministers reached an impasse in July 2008 in their efforts to agree on a way to advance the DDA in other areas, work in the Rules Group remained relatively quiet until December 18, 2008, when the Chair issued *New Draft Consolidated Chair Texts of the AD and SCM Agreements* (2008 document).<sup>4</sup> In a cover note to the 2008 document, the Chair noted that this new document reflected a “bottom-up approach” and included new draft language on AD and subsidies/CVD issues only in those areas where some degree of convergence among the Members appeared to exist. With respect to more contentious issues for which the Chair felt that he had no basis to propose compromise solutions or drafting language, the document simply identified those issues in brackets, along with a general summary of the range of Members’ views regarding those issues. In the area of general or horizontal subsidy rules, these issues included: export credits, low-cost financing (*i.e.*, footnote 46 of the 2007 text) and export competitiveness. The Chair observed further that not only were there large gaps in the 2008 document where no solutions have been proposed on issues of great importance to Members, but that few, if any, of the areas in which new draft language has been proposed could be characterized as having consensus support.

For fisheries subsidies, rather than providing new draft language, the 2008 document provides only a “roadmap” for further discussion. Reiterating the Rules Mandate for fisheries subsidies and noting that there was no pre-existing fishery subsidies-specific agreement to which to revert, the Chair stated that the outstanding differences among Members on fishery subsidies go to the very concepts and structure of the rules and that, therefore, the roadmap identifies the key questions that the Rules Group needs to address in order to reconcile the approaches and advance its work in this area.

### *d. Prospects for 2009*

In his cover note to the 2008 document, the Chair noted that he is planning an intensive program of meetings starting in early 2009. Throughout any future discussions, the United States will continue to pursue an aggressive affirmative agenda consistent with the negotiating objective established by Congress to preserve the effectiveness of the trade remedy rules. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome and work to further improve and refine many of the provisions included in the Chairman’s 2007 text.

## **B. Steel: Multilateral Efforts to Address Market-Distorting Practices**

In 2008, the United States continued to address concerns related to the rapidly changing trade situation in the global steel sector, through its work at the OECD, the North American Steel Trade Committee (NASTC) and the U.S. – China Steel Dialogue under the Joint Commission for Commerce and Trade (JCCT).

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<sup>4</sup> See, TN/RL/W/236 (December 18, 2008).

The United States worked closely with the OECD Secretariat as well as the governments of other steel-producing economies to take up policy issues affecting the global steel industry. The OECD covered a broad range of issues in 2008, including capacity expansion, government subsidies in the steel sector, raw materials, governmental trade-distorting practices on key steel-making inputs, restructuring and consolidation of the global steel industry, environmental issues and the effects of the recent economic downturn on the global steel market.

The United States was a key supporter of and participant in the Secretariat's survey of subsidies to the steel sector and was a strong advocate for broad participation in this ongoing exercise. The United States also backed efforts by the OECD Secretariat to reach out to developing steelmaking economies, including the Secretariat's organization of a major steel conference focused on steel-making raw materials held in December 2008 in Kuala Lumpur, Malaysia, and jointly hosted by the OECD, the Government of Malaysia, and the Malaysian steel industry.

The governments and steel industries of North America continued their efforts to examine and pursue common policy approaches to promote the competitiveness of North American steel producers through the NASTC. An initiative under the North American Security and Prosperity Partnership (SPP), the NASTC developed a North American Steel Strategy in 2006 that includes cooperation on issues of importance to steel in multilateral fora (e.g., the OECD Steel Committee and the WTO Rules Negotiations). Most recently, these cooperative efforts included the issuance of a joint statement at the OECD Steel Committee urging governments of all steel producing nations to refrain from the use of administrative measures to control or otherwise influence exports and/or imports of steelmaking raw materials. In addition, under the NASTC, the three North American governments and steel industries have been tracking developments in certain steel-producing countries to identify, corroborate and address, as appropriate, trade-related concerns and distortions in the global steel market.

The continued growth of China's steel production remained a major focus for the United States and other global steel producers in 2008. In December 2005, the United States and China agreed to a cooperative dialogue under the auspices of the JCCT, led by Commerce and USTR on the U.S. side, and by the Ministry of Commerce on the Chinese side. This dialogue represents an effort to increase Chinese government and industry understanding of market-oriented behavior and the problems that subsidies and other government intervention in the steel sector can cause in world steel markets. The fourth steel dialogue meeting was held in October of 2008 in Beijing, with an agenda that included presentations and discussions on steel market developments, consolidation, steelmaking raw materials, and government support policies. Government officials and steel industry representatives from both countries participated in the meeting.

Bilaterally, at the OECD and in WTO accession negotiations, the United States continued to raise specific concerns with other countries about steel policies that contribute

to excess capacity and production, including subsidies, border measures on steel and steelmaking raw materials, and other trade-distorting practices. The United States also continued to oppose both multilateral and bilateral support for projects that increase raw or finished steel capacity.

## **MONITORING AND ENFORCEMENT**

### **A. Advocacy Efforts**

#### **1. Monitoring Subsidy Practices Worldwide**

Identifying, researching and evaluating potential foreign government subsidy practices is a core function of the subsidies enforcement program. Experienced analysts in IA primarily conduct this work, which involves daily searches of worldwide business journals, periodicals, various online resources, utilization of numerous legal databases and ongoing relationships with U.S. industry contacts. Analysts fluent in a variety of foreign languages, including Chinese, French, Spanish, and German, also conduct research in their language of expertise. IA officers stationed overseas (for example, in China) enhance these efforts by helping to gather, clarify, and check the accuracy of information concerning foreign subsidy practices. USTR and IA staff continued their activities to monitor market- and trade-distorting practices by governments worldwide in 2008. A key example, which is described in more detail below, is the extensive year-long research that led to the discovery of the wide spread use of what appears to be prohibited export subsidies by Chinese governments at the national and sub-national levels. The United States is now challenging these subsidies at the WTO.

#### **2. Counseling U.S. Industry**

USTR and IA regularly work with U.S. companies concerned about the subsidization of foreign competitors. The goal is to resolve problems through a combination of informal and formal contacts. The United States will also advise U.S. companies of other options, such as a CVD investigation or WTO dispute settlement.

USTR and IA work closely with affected companies to collect information concerning the potential subsidies and to determine how their commercial interests may have been harmed. While companies facing subsidized competition can usually provide good information as to the financial health of their industry, assistance is often needed to obtain additional information regarding the alleged subsidy practices in question. In these instances, USTR and IA conduct additional research to determine the legal framework under which a foreign government is offering alleged subsidies and whether other U.S. firms or industries have been facing similar problems.

Working with an interagency team, USTR and IA analyze the information and determine the most effective way to proceed. It is often advantageous to pursue resolution

of these problems by raising the matter with the foreign government authorities through informal contacts, formal bilateral meetings or through discussions in the WTO Subsidies Committee. This process may produce more expeditious and practical solutions to the problem than will recourse to WTO dispute settlement or the filing of a CVD petition. If these efforts fail to adequately resolve the issue, however, bringing a formal dispute settlement action in the WTO or advising a firm on a CVD petition always remains an option.

During 2008, USTR and Commerce worked with a broad array of U.S. industries and companies that had significant concerns about unfair foreign government subsidy practices in a wide range of countries. These activities included new and ongoing work on behalf of the U.S. chemical, textile, steel, aerospace, satellite, paper, and aluminum industries, to name a few. The subsidy practices examined included those maintained by the central and local governments of Australia, Brazil, Canada, China, the European Union, India, Indonesia, Japan, Mexico, South Africa, South Korea, Turkey and Vietnam.

### **3. Outreach Efforts**

USTR and IA coordinate with U.S. government personnel who have constant contact with the U.S. exporting community, both in the United States and abroad, to make them aware of the resources and services available regarding subsidy enforcement efforts. As noted, senior IA officers have been stationed in overseas posts, such as Beijing, China, as mandated by Congress. Working closely with their colleagues in U.S. Embassies and IA personnel in Washington, these officers have proved invaluable in undertaking primary source research of potential unfair trade problems in their host countries and in other countries in the region. Overseas personnel also have been an important part of the outreach of the U.S. Government, as they have participated in numerous trade-related seminars in their host countries, which normally cover a country's subsidy-related obligations under the WTO. Additionally, a senior IA officer stationed in Geneva, Switzerland has been a participant in the Rules negotiations and the WTO Antidumping and Subsidies Committees and monitors dispute settlement activities.

IA personnel also maintain close contacts with other units within Commerce's International Trade Administration (ITA) through the Compliance Coordinators Group (CCG). The CCG is comprised of all of ITA's units (Market Access and Compliance, Manufacturing and Services, Import Administration, and the United States and Foreign Commercial Service (USFCS)), as well as the Patent and Trademark Office. The CCG serves as the central coordinating point for ITA's market access and agreement compliance activities. The group meets regularly to share information on issues that may be common across regions or industrial sectors, and works to resolve these issues by drawing upon the full range of expertise available within ITA. The USFCS, which is charged with counseling U.S. companies through its network of domestic and foreign posts, draws upon SEO resources to inform other USFCS officers and the U.S. business community of the work done, and services offered, by the SEO. IA personnel also benefit from information provided by USFCS officers about the types of subsidy problems U.S.



companies are facing in their host countries.

Economic and agriculture officers in other U.S. Government agencies, including the Department of State and the U.S. Department of Agriculture, are also involved in subsidies enforcement activities.<sup>5</sup> USTR and IA personnel work to train State officers on how to identify and evaluate foreign subsidy practices. Cooperation of this type occurs not only when initiated by IA or USTR, but on an ongoing basis whereby State economic officers develop and share information with Commerce, USTR and the interagency team concerning foreign government subsidy practices and the administration by foreign governments of their unfair trade laws. This collaboration among U.S. government agencies, each with its own on-the-ground knowledge and expertise, is important to help effectively exercise U.S. rights under the Subsidies Agreement.

Technical exchanges on trade remedy issues continued to be an important aspect of U.S. outreach activities with foreign government officials in 2008. During the past year, IA organized and participated in many of these exchanges, including with officials from Australia, Cambodia, the European Union, India, Thailand, Turkey, Ukraine and Vietnam. These technical exchanges promote a better understanding of other countries' trade remedy practices and allow a more fulsome evaluation of how other countries are complying with their WTO obligations. Technical exchanges have also provided the opportunity to encourage "best practices", and strengthen ties with other trade remedy administrators, and foster increased transparency.

#### **4. Electronic Subsidies Enforcement Library**

The 'Electronic Subsidies Enforcement Library' (ESEL) website is a key tool used by IA to organize subsidy-related material and convey it to the public. The website -- available at <http://ia.ita.doc.gov/esel/> -- includes foreign governments' subsidies notifications made to the WTO, an overview of the SEO, information on U.S. AD/CVD proceedings as well as AD/CVD actions with respect to U.S. exports, helpful links, and an easily navigable tool that provides information about each subsidy program investigated by Commerce in CVD cases since 1980. (See, Attachment 3.) The website is updated to provide the most recently available information to the public in a timely manner. During 2009, IA plans to invest in new software for the ESEL, with the goal of significantly improving the user interface and search functions, in particular for subsidy programs investigated by Commerce in its CVD proceedings.

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<sup>5</sup> Section 281(g) of the URAA requires that Commerce secure the cooperation of other federal agencies in these activities.

## **B. CHINA**

### **1. World Trade Organization**

#### **a. Transitional Review Mechanism (TRM)**

In October 2008, the United States took part in the seventh annual transitional review with respect to China's implementation of its WTO obligations. This review is mandated by paragraph 18 of Part I of the Protocol of Accession of the People's Republic of China to the WTO, which provides that all subsidiary bodies, including the Subsidies Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession . . . review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol." Paragraph 18 further states that such reviews shall be conducted on an annual basis for eight years, with a final review occurring by the tenth year after accession.

Upon its accession to the WTO, China agreed to assume the obligations of the WTO Subsidies Agreement. As part of its accession agreement, China committed that it would eliminate, by the time of its accession, all subsidies prohibited under Article 3 of the Subsidies Agreement, *i.e.*, export subsidies and import substitution subsidies. The Subsidies Agreement also requires that China, like all other WTO Members, notify all of its subsidies that are specific, whether maintained by the national or sub-national governments.

China also agreed to various special rules that apply when other WTO members seek to enforce the disciplines of the Subsidies Agreement against Chinese subsidies (either in individual WTO members' CVD proceedings or in WTO enforcement proceedings). These rules permit WTO members, in certain circumstances, to identify and measure Chinese subsidies using alternative methods in order to account for the special characteristics of China's economy. For example, when determining whether preferential government benefits have been provided to a Chinese enterprise via a loan, under certain conditions WTO members can use foreign or other market-based criteria rather than Chinese benchmarks to ascertain the benefit of that loan and its terms. Special rules also govern the actionability of subsidies provided to state-owned enterprises (SOEs), including state-owned banks.

As previously reported, following increasing pressure from the United States and other WTO members, China finally submitted its long-overdue subsidies notification to the WTO's Subsidies Committee in April 2006. Although the notification reported on more than 70 subsidy programs, it was also notably incomplete, as it failed to notify any subsidies provided by China's state-owned banks or by provincial and local government authorities. This failure leaves a significant gap in China's subsidies reporting and is particularly troubling given the important role played by sub-national governments in China's banking system and in the development of Chinese industry. In the context of the Transitional

Review in 2008, the United States reiterated its concerns as to the lack of provincial and local programs in China's subsidy notification, and pressed China to submit a full notification as soon as possible. The United States also informed the Committee that it had uncovered certain unreported measures that appeared to be export subsidies formulated by the central government and implemented by provincial and local governments, and stated that any export subsidies currently in place had to be terminated without delay (see discussion below).

In 2009, the United States will continue to research and analyze possible Chinese subsidy programs. At the WTO, using both regular meetings and transitional reviews before the Subsidies Committee, U.S. engagement will focus on the need for China to eliminate any remaining subsidies prohibited under the Subsidies Agreement – including those at the sub-national level – and to adhere more fully to its subsidy reporting obligations.

## **2. Dispute Settlement**

Shortly before the resolution of the WTO dispute settlement case brought by the United States and Mexico regarding China's prohibited tax subsidies (see last year's report), the United States began to develop information indicating that China has recently implemented and continues to maintain numerous measures that appear to constitute prohibited export subsidies in the form of grants, loans and other incentives benefiting products from a range of sectors in China. IA and USTR staff compiled this information after conducting extensive Chinese-language research over many months. Nearly all of the hundreds of pages of documents collected needed to be translated and subsequently analyzed. Many of the subsidies uncovered are provided by provincial and local governments seeking to implement central government directives found in two umbrella programs, the "World Top Brand" program and the "Famous Export Brand" program. These programs offer significant payments and other benefits tied to qualifying Chinese companies' exports.

In the course of its work, IA and USTR also discovered information regarding several other apparent export subsidies provided by sub-central governments separately from the two central government brand programs, as well as extensive information with respect to the implementation of industrial policies at sub-central government levels. The United States sought to engage China in discussions to resolve these matters, both through high-level bilateral engagement and meetings at the WTO, including the Subsidies Committee and the Council for Trade in Goods. However, these efforts unfortunately failed to resolve the issue. Therefore, as discussed further below, in December 2008, the United States began WTO dispute settlement proceedings. Consultations will be held with China in early 2009.

### **3. Application of Countervailing Duty Law to China**

In 2007, based on a CVD petition filed by the U.S. coated free sheet paper industry, the Commerce Department changed its longstanding policy of not applying U.S. CVD law to China or any other country considered a “non-market economy” for antidumping purposes. The Commerce Department began applying U.S. CVD law to China after finding that reforms to China’s economy in recent years had removed the obstacles to applying the CVD law that were present in the “Soviet-era economies” at issue when the Commerce Department first declined to apply the CVD law to NMEs in the 1980s.

Since then, several other U.S. industries concerned about subsidized Chinese imports have filed CVD petitions. Through January 2009, the Commerce Department completed affirmative CVD investigations concerning Chinese imports of laminated woven sacks, circular and rectangular pipe, off-the-road tires, thermal paper, sodium nitrate and pressure pipe. Ongoing CVD investigations of Chinese imports of line pipe, citric acid, kitchen racks, and lawn groomers are scheduled to be completed in 2009. The subsidies being investigated include preferential government policy loans, income tax and VAT exemptions and reductions, the provision of goods and services such as land, electricity and steel on non-commercial terms, and a variety of provincial and local government subsidies.

In September 2008, China requested WTO consultations with the United States regarding the Commerce Department’s final determinations in the CVD investigations on Chinese imports of circular steel pipe, rectangular steel pipe, off-the-road tires and laminated woven sacks. Consultations were held in Geneva in November 2008, and China subsequently requested the establishment of a WTO panel.

### **4. JCCT - Structural Issues Working Group (SIWG)**

Established in 1983, the JCCT is a government-to-government consultative mechanism that provides a forum to resolve trade concerns and promote bilateral commercial opportunities. The status of the JCCT was elevated following the December 2003 meeting of President Bush and Chinese Premier Wen to focus higher-level attention on outstanding trade disputes. In 2008, it was chaired by Secretary Gutierrez and Ambassador Schwab on the U.S. side and by Vice Premier Wang Qishan on the Chinese side.

From a U.S. trade policy standpoint, it is important to discuss with China existing structural and operational issues regarding China’s economy, particularly those that give rise to trade friction, and to encourage China’s ongoing economic reform efforts. At the same time, China’s status as a non-market economy under U.S. antidumping law is of substantial concern and importance to the Chinese government. In order to better understand China’s reforms to date and various structural and operational aspects of China’s economy, as well as to discuss issues that relate to China’s desire for market economy status under the U.S. antidumping law, China and the United States agreed

during the April 2004 JCCT meetings to the establishment of a new working group, the SIWG, to be jointly chaired by Commerce's Assistant Secretary for Import Administration and the Assistant U.S. Trade Representative for China Affairs on the U.S. side and the Director General of the Bureau of Fair Trade from China's Ministry of Commerce (MOFCOM) on the Chinese side.

The SIWG provides a forum for the U.S. and Chinese governments to explore and discuss China's economy and its ongoing economic reform program, address concerns about market- and trade-distorting practices that might otherwise lead to bilateral trade frictions, and consider the Government of China's concerns about China's NME status under U.S. antidumping law.<sup>6</sup> The working group has met a number of times since its launch in July 2004, with both sides including in their delegations experts from a variety of agencies responsible for the broad range of structural/institutional issues and economic reforms/policies under discussion.

In the inaugural meeting of the U.S.-China Strategic Economic Dialogue in December 2006, both China and the United States agreed to invigorate discussion under the JCCT of structural issues/market economy status, with the SIWG providing the vehicle for doing so.

**C. WTO Dispute Settlement and Other CVD Cases of Significance to Subsidies Disciplines**

**1. China - Prohibited Subsidies**

On February 2 and April 27, 2007, the United States requested consultations and supplemental consultations, respectively, with China regarding subsidies provided in the form of refunds, reductions, or exemptions from income taxes or other payments. Because these subsidies were offered on the condition that enterprises purchase domestic over imported goods, or on the condition that enterprises meet certain export performance criteria, they appeared to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the Subsidies Agreement, Article III:4 of the *General Agreement on*

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<sup>6</sup>The SIWG is not a forum for resolving this issue, but it provides a constructive setting for the mutual exchange of views and relevant information. Under U.S. law, any review of China's NME status must take place in a formal proceeding before Commerce, open to all interested parties. In this regard, in December 2005, a Chinese company, with the support of the Chinese government, requested a review of China's NME status in the antidumping investigation of certain lined paper products. Commerce issued its full analysis of China's economy in August 2006, finding that China remains an NME for purposes of the U.S. antidumping law. In considering this request for a review of China's NME status, Commerce took note of the economic reforms that China had implemented to date, as well as the significant areas of China's economy where, it is generally recognized, fundamental reforms remain incomplete, e.g. the banking sector, land ownership and property rights, and the rule of law.

*Tariffs and Trade 1994*, and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO Protocol of Accession. Mexico also requested consultations regarding the same subsidies.

Because consultations did not resolve the disputes, the WTO Dispute Settlement Body (DSB), at the request of the United States and Mexico, established a single dispute settlement panel on August 31, 2007, to hear both disputes. On December 19, 2007, the parties informed the DSB that they had reached an agreement with respect to this matter. The agreement calls for China to take certain steps, including the revision and repeal of certain existing measures as well as the adoption of new measures, that eliminate as of January 1, 2008, the import substitution and export subsidies challenged by the United States. The agreement also commits China not to re-introduce these subsidies or establish import substitution or export subsidies under its new income tax law that went into effect on January 1, 2008. China eliminated the challenged subsidies on January 1, 2008, as agreed, and since then USTR and Commerce have monitored China's adherence to the other terms of the agreement.

## **2. China - Grants, Loans and Other Incentives**

As discussed above, on December 19, 2008, the United States requested consultations with China regarding government support tied to China's industrial policy to promote the sale of Chinese brand name and other products abroad. This support is provided in the form of cash grant rewards, preferential loans, research and development funding, and payments to lower the cost of export credit insurance. Because these subsidies are offered on the condition that enterprises meet certain export performance criteria, they appear to be inconsistent with several WTO provisions, including Article 3 of the Subsidies Agreement and Articles 3, 9, and 10 of the Agreement on Agriculture, as well as specific commitments made by China in its WTO Protocol of Accession. In addition, to the extent that the grants, loans and other incentives also benefit Chinese-origin products but not imported products, the measures appear to be inconsistent with Article III:4 of the *General Agreement on Tariffs and Trade 1994*. Mexico and Guatemala also requested consultations regarding the same measures.

## **3. European Union Support for Airbus**

For many years, the United States has had serious concerns about the continued EU subsidization of Airbus, a company with more than a 50 percent share of the world market for large civil aircraft ("LCA"). The subsidies have taken many forms, including "launch aid," which Airbus uses to launch new models of aircraft; grants for Airbus infrastructure; forgiveness of debt; and subsidies to underwrite Airbus' research and development costs.

U.S. concerns about Airbus subsidies intensified in 2004, when it became apparent that Airbus intended to launch a new aircraft, the A350, with yet another round of EU launch aid. In October 2004, following unsuccessful, U.S.-initiated efforts to negotiate a

new U.S.-EU agreement that would preclude new subsidies, the United States filed a WTO consultation request with respect to the A350 subsidies and other subsidies that Airbus has received. Concurrent with the U.S. WTO consultation request, the United States also exercised its right to terminate the 1992 U.S.-EU bilateral LCA agreement.

The WTO consultations failed to resolve the U.S. concerns, and a renewed effort to negotiate a solution ended without success in April, 2005. Therefore, on May 31, 2005, the United States filed a WTO panel request. The DSB established a panel on July 20, 2005, and panel proceedings are currently ongoing. (Separately, and as discussed below, on May 31, 2005, the EU filed a WTO panel request with respect to alleged U.S. federal, state and local government subsidies to Boeing. The EU's complaint is pending before a different WTO panel.) The parties have filed several written submissions, and the panel heard arguments by the parties at meetings in March and July 2007. The panel recently indicated that it would not issue its interim report until July 2009 at the earliest.

#### **4. United States Support for Large Civil Aircraft**

On October 6, 2004, the EU requested consultations with respect to "prohibited and actionable subsidies provided to U.S. producers of large civil aircraft." The EU alleged that such subsidies violate several provisions of the SCM Agreement, as well as Article III:4 of the GATT. Consultations were held on November 5, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would move on to panel proceedings. These discussions did not produce an agreement. On May 31, 2005, the EU requested the establishment of a panel to consider its claims. The EU filed a second request for consultations regarding large civil aircraft subsidies on June 27, 2005. This request covered many of the measures covered in the initial consultations, as well as many additional measures that were not covered.

The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. The DSB established a panel on February 17, 2006. The parties have filed several written submissions, and the panel heard arguments by the parties at meetings in September 2007 and January 2008. The panel recently indicated that it would have additional questions for the parties sometime after May 1, 2009, and would not release its interim report until the second half of 2009, at the earliest.

#### **5. United States – Subsidies on Upland Cotton**

On September 8, 2004, the panel in *United States—Subsidies on Upland Cotton* circulated its final report. The panel, *inter alia*, made the following findings: (1) certain export credit guarantees (GSM 102, GSM 103, SCGP programs) were prohibited export subsidies; (2) some U.S. domestic support programs (marketing loan, counter-cyclical, market loss assistance, and Step 2 payments) were found to cause significant suppression of cotton prices in the world market causing serious prejudice to Brazil's interests; (3) other

U.S. domestic support programs (production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because the programs were not shown to cause significant price suppression; and (4) Step 2 payments to exporters of cotton were prohibited export subsidies and Step 2 payments to domestic users were prohibited import substitution subsidies because they were contingent upon the purchase of U.S. cotton.

The United States and Brazil appealed several of the panel's findings. The Appellate Body circulated its report on March 3, 2005, upholding the panel's findings appealed by the United States. The Appellate Body also rejected or declined to rule on most of Brazil's arguments. On March 21, 2005, the DSB adopted the panel and Appellate Body reports and, on April 20, 2005, the United States advised the DSB that it intended to bring its measures into compliance.

On June 30, 2005, the United States announced that it would cease to issue export credit guarantees under the GSM 103 program. It also announced a new fee structure for the GSM 102 program designed to make the program more "risk-based," consistent with the original panel's findings. The United States ceased to issue guarantees under the SCGP as of October 1, 2005.

On July 5, 2005, the United States proposed legislation to, *inter alia*, repeal the Step 2 program. The repeal was adopted by Congress on February 1, 2006, with an effective date of August 1, 2006.

On July 5, 2005, Brazil requested authorization to impose countermeasures and suspend concessions in the amount of \$3 billion in connection with the "prohibited subsidy" findings. On July 14, 2005, the United States objected to the request, thereby referring the matter to arbitration. On August 17, 2005, the United States and Brazil agreed to suspend the arbitration. On October 6, 2005, Brazil made a separate request for authorization to impose countermeasures and suspend concessions in the amount of \$1 billion per year in connection with the "serious prejudice" findings. The United States objected to Brazil's request on October 17, 2005, and that matter was also referred to arbitration. Thereafter, on November 21, 2005, the United States and Brazil jointly requested suspension of this second arbitration.

On September 28, 2006, the DSB established an Article 21.5 (compliance) panel, at Brazil's request, to review U.S. compliance with the rulings in the dispute. Brazil argued that the United States remained out of compliance with both the prohibited subsidy findings and the actionable subsidy findings. The panel's final report was circulated to WTO Members on December 18, 2007. The panel found, *inter alia*, that: (1) export credit guarantees issued under the GSM 102 program with respect to unscheduled and certain scheduled (rice, pig and poultry meat) commodities constituted prohibited export subsidies; and (2) U.S. marketing loan and counter-cyclical payments for upland cotton were continuing to cause serious prejudice to Brazil by significantly suppressing world upland cotton prices. The panel rejected Brazil's claim that payments under the marketing loan



and counter-cyclical payment programs were responsible for an increase in U.S. market share in marketing year 2005 and thereby caused serious prejudice to Brazil's interests. The panel also agreed that the United States was not required to have refused to perform on export credit guarantees that were issued prior to the deadline for the implementation of the DSB's recommendations and rulings as to such guarantees (July 1, 2005) and that were still outstanding as of that date.

The United States appealed the compliance panel's adverse findings on February 12, 2008. Brazil filed its notice of other appeal on February 25, 2008. The Appellate Body issued its report on June 2, 2008, in which it:

- upheld the compliance panel's finding that U.S. marketing loan and counter-cyclical payments cause significant price suppression in the market for upland cotton, thereby constituting present serious prejudice to Brazil;
- while agreeing with the United States that the compliance panel erred in dismissing U.S. Government budgetary data showing that U.S. export credit guarantee programs operate at a profit, nonetheless upheld the compliance panel's ultimate finding that GSM 102 export credit guarantees with respect to unscheduled products and certain scheduled products (rice, pig meat, poultry meat) were prohibited export subsidies; and
- upheld the compliance panel's finding that Brazil's claims as to marketing loan and counter-cyclical payments made after September 21, 2005, and Brazil's claims as to GSM 102 guarantees for exports of pig meat and poultry meat, were within the scope of the compliance proceeding.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on June 20, 2008. Brazil requested resumption of the arbitration process on August 25, 2008. On October 1, 2008, the United States and Brazil agreed on individuals to carry out the arbitrations, which are currently being briefed and argued.

## **6. United States Domestic Support for Agriculture**

On January 8, 2007, Canada requested WTO dispute settlement consultations with the United States, alleging that: (1) support to U.S. corn producers has caused and threatens to cause serious prejudice to the interests of Canada, specifically through price suppression in the Canadian corn market; (2) U.S. export credit guarantee programs for corn and all unscheduled commodities constitute prohibited export subsidies; and (3) that U.S. government support for all agricultural products resulted in a breach of the U.S. scheduled cap on its Aggregate Measure of Support (AMS) under the Agreement on Agriculture. On July 11, 2007, Brazil submitted a request for consultations that made claims similar to the second and third allegations made by Canada.

On November 8, 2007, both Canada and Brazil requested the establishment of a panel, limited to the claims that total U.S. support for agriculture breached the U.S. AMS limit in each of 1999, 2000, 2001, 2002, 2004, and 2005, contrary to the Agreement on Agriculture. More than 100 programs were identified in each panel request as allegedly providing support during the relevant years. The panel requests did not include claims under the SCM Agreement that had been part of the consultations request (*i.e.*, serious prejudice with respect to corn and export credit guarantee programs). On December 17, 2007, the DSB established a single panel to consider both disputes. However, the panel has not yet been composed.

## **7. Canada – U.S. Softwood Lumber Agreement**

The 2006 Softwood Lumber Agreement between the Government of the United States of America and the Government of Canada (“SLA”) was signed on September 12, 2006, and entered into force on October 12, 2006. Pursuant to a settlement of litigation, Commerce revoked the antidumping and countervailing duty orders on imports of softwood lumber from Canada. (The settlement ended a large portion of the litigation over trade in softwood lumber.) Upon revocation of the orders, U.S. Customs and Border Protection ceased collecting cash deposits and returned previously collected deposits with interest to the importers of record.

The SLA provides for unrestricted trade in softwood lumber in favorable market conditions. However, when the lumber market is soft, Canada must impose export measures. Canadian exporting provinces can choose either to collect an export charge that ranges from 5 percent to 15 percent as prices fall or to collect lower export charges and limit export volumes. The SLA also includes provisions to address potential Canadian import surges, provide for effective dispute settlement, and monitor administration of the SLA through the establishment of a Softwood Lumber Committee. In addition, the SLA prohibits “circumvention” of the SLA by restricting Canada from taking any action having the effect of reducing or offsetting the export measures. The SLA specifically provides that, with certain enumerated exceptions, grants or benefits provided by a Party, including any public authority of a Party, to producers or exporters of Canadian softwood lumber products shall be deemed to reduce or offset the export measures.

On March 30, 2007, the United States requested formal consultations with Canada to resolve concerns regarding several Canadian federal and provincial programs, as well as Canada’s interpretation of provisions of the SLA that adjust softwood lumber export levels, including the level triggering the SLA’s surge mechanism. After formal consultations failed to resolve these concerns, on August 8, 2007, the United States requested international arbitration under the terms of the SLA to compel compliance with Canada’s obligations relating to export volume caps and proper application of the import surge mechanism. On March 3, 2008, the arbitration tribunal considering the matter determined that Canada violated its SLA obligations by failing to properly adjust quota levels during the first half of 2007. The tribunal is expected to issue a determination on the appropriate remedy for Canada’s violation in early 2009. On January 18, 2008, the United States

asked a second arbitration tribunal to consider its challenge of several provincial programs. These programs circumvent Canada's obligations under the SLA by reducing or offsetting the export measures imposed by the SLA. A decision is anticipated in this arbitration sometime in late 2009.

On June 18, 2008, Congress enacted the Softwood Lumber Act of 2008. Among other things, the Act requires Commerce, every 180 days, to provide to the "appropriate congressional committees a report on any subsidies on softwood lumber . . . provided by countries of export." On December 15, 2008, Commerce submitted its first report to the Senate Finance and House Ways and Means Committees, and placed a copy of the report on the agency's website.

#### **8. European Union Countervailing Duty Investigation of Biodiesel**

On June 13, 2008, the European Commission initiated a countervailing duty investigation of biodiesel exports from the United States. Several alleged state and federal government programs are included in the investigation. USTR and Commerce have worked closely with the states, other federal government agencies and U.S. industry to respond to Commission questionnaires and verification of questionnaire responses. Under EU law, provisional measures, if any, may be imposed no later than March 2009, and the investigation is to be concluded by July 2009.

#### **9. European Union Countervailing Duty Investigation of Sodium Metal**

On July 23, 2008, the European Commission initiated a countervailing duty investigation of sodium metal from the United States. The alleged subsidy relates to the pricing of hydroelectric power generated at Niagara Falls and supplied by the New York Power Authority (NYPA) to the sole U.S. producer of sodium metal. USTR and Commerce have worked closely with NYPA, New York State officials, and U.S. industry to respond to Commission questionnaires and verification of questionnaire responses. USTR will continue to argue to the Commission that the NYPA hydroelectricity programs at issue do not constitute countervailable subsidies. Under EU law, provisional measures, if any, may be imposed no later than April 2009, and the investigation is to be concluded by August 2009.

### **D. WTO Subsidies Committee**

The Subsidies Committee's agenda in 2008 included its routine activities concerned with reviewing and clarifying the consistency of WTO Members' domestic laws, regulations and actions with Agreement requirements. During the fall meeting, the Committee undertook its seventh annual transitional review with respect to China's implementation of the Agreement (see, Transitional Review Mechanism section above). Other issues addressed in the course of the year included: the examination of specific export subsidy

program extension requests for certain developing country Members, the approval of new members of the Permanent Group of Experts and the updating of the methodology for Annex VII (b) of the Agreement. Further information on these various activities is provided below.

## **1. Subsidy Notifications by Other WTO Members**

Subsidy notification and surveillance is one means by which the Subsidies Committee and its Members seek to ensure adherence to the disciplines of the Subsidies Agreement. In keeping with the objectives and directives expressed in the URAA, WTO subsidy notifications also play an important role in the U.S. monitoring and enforcement activities under the Subsidies Agreement.

Under Article 25.2 of the Subsidies Agreement, Members are required to report certain information on all measures, practices and activities that, as set forth in Articles 1 and 2 of the Agreement, meet the definition of a subsidy and are specific within the territory of a Member. In 2008, two 2005 new and full subsidy notifications and nineteen 2007 new and full notifications were reviewed. Unfortunately, numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.<sup>7</sup>

Perhaps most importantly, as noted previously, the Committee continued its examination of the new and full notification of China's subsidies to the WTO, which was originally submitted in April 2006, but only after increasing pressure from the United States and other WTO members. As noted above, although the notification reported on more than 70 subsidy programs, it was also significantly incomplete.

The United States has devoted significant time and resources to monitoring and analyzing China's subsidy practices, and these efforts helped to identify promptly significant omissions in China's subsidy notification. These efforts have also made clear, in particular, that provincial and local governments play an important role in implementing China's industrial policies, including through subsidization of enterprises.

In accordance with the Subsidies Committee procedures, the United States submitted extensive written questions and comments on China's subsidies notification in July 2006, as did several other WTO Members, including the EC, Japan, Canada, Mexico, Australia and Turkey. China responded to those submissions in September 2007, although many of China's responses were inadequate and failed to provide much of the information required by WTO rules. For example, the responses contained very little information about subsidies provided by China's state-owned banks, asset management companies and sub-national government authorities. Other program-specific answers were often inadequate to permit a reasonable understanding of the programs at issue.

The United States subsequently raised concerns about China's incomplete subsidy

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<sup>7</sup> For further information, see the Report (2008) of the WTO Committee on Subsidies and Countervailing Measures (G/L/869; November 11, 2008).

notification and identified numerous unreported subsidies during the transitional reviews conducted by the Subsidies Committee in 2007 and 2008 and in connection with the second Trade Policy Review of China in May 2008, as did other WTO members. To date, in response to specific requests for information regarding subsidy programs at sub-central levels of government and a comprehensive updated subsidy notification, China has stated only that it continues to study the most effective and efficient way to collect the necessary information and has not provided any indication of a timetable.

In 2009, the United States will continue to pursue its own research and analysis of possible Chinese subsidy programs. The United States will also continue to raise its concerns regarding China's subsidies practices in bilateral meetings with China. At the WTO, using both regular meetings and transitional reviews before the Subsidies Committee, U.S. engagement will continue to focus on the need for China to adhere more fully to its subsidy notification obligations and to abolish any subsidies that are prohibited under WTO rules.

## **2. Review of CVD Legislation, Regulations and Measures**

Throughout 2008, WTO Members continued to submit notifications of new or amended CVD legislation and regulations, as well as CVD investigations initiated and decisions taken. These notifications were reviewed and discussed by the Committee at both of its regular meetings. In reviewing notified CVD legislation and regulations, the Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified laws and regulations and their relationship to the obligations of the Agreement. The United States continued to play an important role in the Committee's examination of the operation of other Members' CVD laws and their consistency with the obligations of the Agreement.

To date, 88 Members of the WTO (counting the current 27 Members of the European Union as one) have notified that they have CVD legislation in place, or have notified that they have no such legislation, while 38 Members have not made a notification. Among the notifications of CVD laws and regulations reviewed in 2008 were those of Canada, China, the European Union, Ukraine and the United States.

As for CVD measures, five WTO Members notified CVD actions taken during the latter half of 2007, and nine Members notified actions taken in the first half of 2008. The Committee reviewed actions taken by Australia, Brazil, Canada, Chile, the European Union and the United States.

## **3. Subsidy Notification by the United States**

The United States submitted its last new and full subsidies notification in October 2007. Researching and assembling the necessary detailed information regarding U.S. assistance programs and consulting extensively with numerous federal and state agencies was an immense undertaking requiring a significant commitment of staff and other

resources of both USTR and Commerce. The U.S. subsidy notification submitted in 2007 included over 40 federal programs and a substantial increase in the number of state programs notified – 390 in total. This reflected an intensified effort by Commerce and USTR, and heightened cooperation between federal and state government personnel. As such, the notification reflected the further institutionalization of the U.S. WTO subsidy notification process. During 2008, the United States received several questions regarding its notified subsidy programs and responded in a timely manner to those questions.

#### **4. Article 27.4 Update**

Under the SCM Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the SCM Agreement authorizes the Subsidies Committee to extend this deadline where justified. If the Committee does not affirmatively determine that an extension is justified, the export subsidy at issue must be phased out within two years.

To address the concerns of certain small developing country Members, a special procedure within the context of Article 27.4 of the SCM Agreement was adopted at the Fourth WTO Ministerial Conference in 2001. Under this procedure, a developing Member meeting all of the agreed-upon qualifications became eligible for annual extensions for a five-year period through 2007, in addition to the two years referred to under Article 27.4. Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests since 2002 under this special procedure.

Following a request for a further extension, in 2007 the Subsidies Committee decided to recommend to the General Council that it extend the transition period until 2013 under similar special procedures as those that had previously been in place, with a two-year phase-out period ending in 2015. An important outcome of these negotiations, insisted upon by the United States and other developed and developing countries, was that the beneficiaries have no further recourse to extensions beyond 2015. The General Council adopted the recommendation of the Subsidies Committee in July 2007.

Specific export subsidy program extension requests under the new procedures were made in 2008 by all of the developing country Members listed above. These requests required, *inter alia*, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the Subsidies Committee conducted a detailed review of more than 40 export subsidy programs. At the end of the process, all of the extension requests were granted. (A chart of all the programs is found in Attachment 3.)

#### **5. Permanent Group of Experts**

Article 24 of the SCM Agreement directs the Committee to establish a Permanent Group of Experts (PGE) “composed of five independent persons, highly qualified in the

fields of subsidies and trade relations.” The Agreement articulates three possible roles for the PGE: (i) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy, within the meaning of Article 3 of the SCM Agreement; (ii) to provide, at the request of the Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a Member, a “confidential” advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. Article 24 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

In the beginning of 2008, the Permanent Group of Experts only had two members: Yuji Iwasawa (Japan) and Mr. Asger Petersen (Denmark). The Subsidies Committee had been unable to reach a consensus as to the appointment of new members to succeed Mr. Hyung-Jin Kim (Korea), Mr. Terence P. Stewart (United States), and Professor Okan Aktan (Turkey), whose terms expired in 2005, 2006 and 2007, respectively. Mr. Iwasawa's term expired in the spring of 2008. Following informal consultations held in March and April 2008, the Chairman announced at the 2008 spring meeting that Members had reached an understanding on the procedures to be followed to fill the four vacant positions. Pursuant to these procedures, the Committee elected four experts at a special meeting held in July 2008: Dr. Chang-fa Lo (Chinese Taipei); Dr. Manzoor Ahmad (Pakistan); Mr. Zhang Yuqing (China); and Mr. Jeffrey A. May (United States), with terms until 2010, 2011, 2012 and 2013, respectively.

## **6. The Methodology for Annex VII (b) of the SCM Agreement**

Annex VII of the SCM Agreement identifies certain lesser developed country Members that are eligible for particular special and differential treatment. Specifically, the export subsidies of these Members are not prohibited and, therefore, are not actionable as prohibited subsidies under the dispute settlement process. The Members identified in Annex VII include those WTO Members designated by the United Nations as “least developed countries” (Annex VII(a)) as well as countries that had, at the time of the negotiation of the Agreement, a per capita GNP under \$1,000 per annum and that are specifically listed in Annex VII(b).<sup>8</sup> A country automatically “graduates” from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. At the Fourth Ministerial Conference, Ministers made a decision calling for the calculation of the \$1,000 threshold in constant 1990 dollars. The WTO Secretariat updated these calculations in 2008.<sup>9</sup>

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<sup>8</sup>Members identified in Annex VII(b) are: Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of a technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

<sup>9</sup> See G/SCM/110/Add.5.

## **E. U.S. Monitoring of Subsidy-Related Commitments**

### **1. WTO Accession Negotiations**

Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members. In a typical accession negotiation, the applicant submits an application to the WTO General Council, which establishes a Working Party to review information on the applicant's trade regime and to oversee the negotiations. Accession negotiations involve a detailed review of the applicant's entire trade regime by the Working Party and bilateral negotiations for import market access.

The economic and trade information reviewed by the Working Party includes the acceding candidate's subsidies regime. Subsidy-related information is summarized in a memorandum submitted by an applicant detailing its foreign trade regime, which is supplemented and corroborated by independent research throughout the accession negotiation. USTR and Commerce, along with an interagency team, review the compatibility of acceding parties' subsidy regimes with WTO subsidy rules. Specifically, the interagency team examines information on the nature and extent of the candidate's subsidies, with particular emphasis on subsidies that are prohibited under the Subsidies Agreement. Additionally, an accession candidate's trade remedy laws are examined to determine their compatibility with the relevant WTO obligations.

The United States' policy is to seek commitments from accession candidates that they eliminate all prohibited subsidies upon joining the WTO, and that they will not introduce any such subsidies in the future. Additional commitments may be sought regarding any subsidies that are of particular concern to U.S. industries.

In 2008, WTO accession negotiations continued with a wide range of countries that, to varying degrees, included discussion of those countries' subsidies regimes. The countries included Ukraine, Russia, Yemen, Equatorial Guinea, Iraq and Cape Verde, among others.

In January 2008, the WTO Working Party reviewing Ukraine's negotiation to become a Member of the WTO adopted its accession package and on May 16, 2008, Ukraine became the WTO's 152nd Member. In bilateral discussions, the United States worked very closely with Ukraine on its subsidy notification to ensure that it met its notification obligations prior to accession. Ukraine has committed to change legislation on anti-dumping, countervailing duties and safeguard measures to achieve conformity with WTO provisions. Ukraine also committed to eliminate its remaining prohibited subsidies.

Cape Verde became the WTO's 153rd Member on July 23, 2008. As a least developed country, Cape Verde is entitled to more flexible terms of WTO accession, with transitions for implementation of its obligations, and market access terms that take account of its unique economic limitations. With regard to subsidies, Cape Verde agreed to cease granting subsidies deemed prohibited under the Subsidies Agreement within two years.



## **2. WTO Trade Policy Reviews**

The WTO's Trade Policy Review Mechanism provides USTR and Commerce with another opportunity to review the subsidy practices of WTO Members. Trade Policy Reviews (TPRs) focus on the trade policies and practices of a particular country while also taking into account overall economic and developmental needs, policies and objectives, as well as the external economic environment that a country faces. The four largest traders in the WTO (the European Union, the United States, Japan and China) are examined once every two years. The next 16 largest countries, based on their share of world trade, are reviewed every four years. The remaining countries are reviewed every six years, with the possibility of a longer interim period for the least-developed countries. For each review, two documents are prepared: a policy statement by the government under review, and a detailed report written independently by the WTO Secretariat.

These reviews play an important role in ensuring that WTO Members meet transparency requirements concerning their subsidy practices. TPRs also provide a broader context in which to assess a Member's subsidy policies and their role in that Member's economy than do the Subsidies Committee notification reviews. In reviewing these reports, USTR and Commerce focus on the information concerning the subsidy practices detailed in the report, but also conduct additional research on potential omissions regarding known subsidy practices that have not been reported. In 2008, USTR and Commerce reviewed 15 Members' TPRs, including those of Mexico, Korea, Pakistan and China

## **CONCLUSION**

The past year witnessed the continuation of two critical issues for subsidies enforcement: the subsidy negotiations in the DDA and subsidy concerns with respect to China. The Rules Group made little progress in 2008 in strengthening the subsidy rules, although the fisheries subsidies rules continue to hold promise for advancement. While the proposed amendments to the existing horizontal subsidy rules do little to enhance disciplines, it should not be overlooked that the 2007 text and 2008 document adopt positions long advocated by the United States and that efforts to weaken the existing rules have not prevailed. In the coming year, given the deteriorating economic climate, responding government actions around the world will likely raise a variety of issues under the existing subsidy rules, and any proposed horizontal subsidy rules in the Rules Group -- including those in the Chairman's 2007 text and 2008 document -- will be subject to increased scrutiny.

In 2008, the United States continued to press China to provide a full account of its subsidy measures, including those measures taken at the sub-central levels of government. In the absence of such an account, the United States intensified its efforts to identify independently subsidy measures in China, focusing particularly on those measures that may be prohibited. This led to the compilation of a substantial number of Chinese-

language source documents, which appears to confirm that China maintains a number of measures at the central and sub-central government levels that may be prohibited under the Subsidies Agreement. The U.S. efforts in this regard not only uncovered problematic subsidy measures, but also shed additional light on the relationship between the central and sub-central levels of government in China with respect to the development and implementation of industrial policy. As a consequence, we now have a deeper understanding of the context in which subsidies are provided, as well as the mechanisms by which they are distributed. This will enhance our efforts going forward in identifying additional unreported measures and, more generally, ensuring that China adheres to its obligations under the Subsidies Agreement.

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**ATTACHMENT 1**

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## ASSISTING U.S. EXPORTERS TO COMPETE EFFECTIVELY

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**Subsidies Enforcement Office:** The Department of Commerce's Import Administration is responsible for coordinating multilateral subsidies enforcement efforts. The primary mission is to assist the private sector by monitoring foreign subsidies and identifying government assistance programs that can be remedied under the Subsidies Agreement of the World Trade Organization, of which the United States is a member. To fulfill this mission, Import Administration has created the Subsidies Enforcement Office (SEO). As part of its monitoring efforts, the SEO has created a Subsidies Library, which is available to the public via the Internet (<http://ia.ita.doc.gov/esel>). The goal is to create an easily accessible one-stop shop that provides user-friendly information on foreign government subsidy practices.

**Types of Subsidies:** A subsidy can be almost anything a government does, if the following conditions are met: (1) a financial contribution is made by a government or public body and (2) a benefit is received. Trade rules permit remedies in circumstances when subsidies are specific (*i.e.*, provided to a limited number of companies, such as all exporters) and have caused adverse trade effects. Subsidies can take a variety of forms. Following are some of the types of foreign subsidies that could place a U.S. exporter at a competitive disadvantage vis-a-vis a foreign competitor.

- o **Export financing** at preferential rates.
- o **Grants or Tax exemptions** for favored companies or industries.
- o **Loans that are conditioned on meeting local content requirements**, or are contingent upon the use of domestic goods over U.S. exports (commonly referred to as "import substitution subsidies").

**A U.S. exporter is bidding on a project in Country A and is competing against an exporter from Country B. The company from Country B offers a bid that is extremely low, possibly even below what one would assume to be the cost of production. The U.S. exporter may have knowledge that the reason the company from Country B is able to bid so low is that it is being assisted by its government with low cost loans and payment of various export related expenses. In such a situation, we would encourage the U.S. exporter to collect as much information as possible concerning the potential subsidies and then contact us with all of the relevant information. We would then check further into the types of subsidies being received and determine whether any action should be taken.**

**Types of Remedies:** Remedies for violations of the Subsidies Agreement could involve requiring the foreign government to eliminate the subsidy program or its adverse effect, agreed compensation, or, as a last resort, authorized countermeasures by the complaining Member .

**Working Together to Assist U.S. Exporters:** The SEO welcomes any information about foreign subsidy practices that may adversely affect U.S. companies' export efforts. The SEO can evaluate the subsidy in relation to U.S. and multilateral trade rules to determine what action may be possible to take to counteract such adverse effects. By working together to monitor foreign subsidies and enforce the WTO Subsidies Agreement, we can ensure that U.S. companies are competing in a fair international trading system.

Questions and information can be referred to:

Carole Showers Tel.: (202) 482-3217

Fax : (202) 501-7952

E-mail: [Carole.Showers@mail.doc.gov](mailto:Carole.Showers@mail.doc.gov)

Internet: <http://ia.ita.doc.gov/esel/index.html>

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## **ATTACHMENT 2**

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# THE SUBSIDIES ENFORCEMENT LIBRARY

[<http://ia.ita.doc.gov/esel/>]

## First Screen

### **ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY**

- **WTO Agreement on Subsidies and Countervailing Measures**
- **Overview of the Subsidies Enforcement Office**
- **Subsidy Programs Investigated by the Department of Commerce**

- **WTO Subsidies Notifications**
- **Sorted by Date**
- **Sorted by Country**

- **Annual Reports to Congress on Subsidies Enforcement**
- **Reports from 1998-2007**

- **Review and Operation of the WTO Subsidies Agreement –**
  - **June 1999**

## Description of Choices

### **WTO Agreement on Subsidies and Countervailing Measures**

This links the visitor to the World Trade Organization Agreement on Subsidies and Countervailing Measures as found in the Multilateral Agreement on Trade in Goods. Information in this Agreement includes the definition of a subsidy and provides general guidelines under which remedies may be put in place.

### **Overview of the Subsidies Enforcement Office**

This links the visitor to the informational page found in Attachment 1 of this Report, which includes a general overview of the SEO as well as contact information.

### **Subsidy Programs Investigated by DOC**

This links the visitor to information regarding subsidy programs that have been analyzed by Import Administration staff during countervailing duty (CVD) proceedings since 1980. The information is provided by country and then subdivided into various categories, based on the

Department of Commerce's finding in the proceeding. More detailed information about a program in a specific case can be easily found by clicking on the hyperlinked cite to the Federal Register notice, in which a complete description of the program and Commerce's analysis is provided. As of December 2007, the number of countries that have had programs investigated in U.S. CVD proceedings was 53.

### **WTO Subsidies Notifications**

This will link the visitor to all unrestricted WTO subsidy notifications, listed either by date or by country. Beside each country's name is a description of the document, the document number and document symbol as well as the date the document was submitted to the WTO. Clicking on the name of a country will lead the visitor to that country's subsidy notification. The notification will provide a list of notified subsidies, in addition to specific information concerning each subsidy program, such as the type of incentive provided, the duration and purpose of the program, and the legal measure that established the program. Although the Subsidies Agreement stipulates that the notification of a measure does not prejudice its legal status under the Agreement, these notifications do provide detailed information concerning a number of countries' subsidy measures. In the event that less than full information about the program is provided, the Subsidies Enforcement Office, working with other U.S. agencies, seeks more detailed information.

### **Annual Reports to Congress on Subsidies Enforcement**

Links are provided for the visitor to review the most recent SEO Annual Report to Congress as well as past Annual Reports.

### **Review and Operation of the WTO Subsidies Agreement - June 1999**

This links the visitor to the June 1999 Report to Congress that reviewed the operation of the WTO Subsidies Agreement.

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**ATTACHMENT 3**

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Further Extension of the Transition Period Pursuant to Article 27.4 of the Agreement on Subsidies and Countervailing Measures		
WTO MEMBER	NAME OF PROGRAM	SUBSIDIES COMMITTEE ACTION*
ANTIGUA & BARBUDA	Fiscal Incentives Act	Extension granted
	Free Trade/Processing Zones	Extension granted
BARBADOS	Fiscal Incentive Program	Extension granted
	Export Allowance	Extension granted
	Research & Development Allowance	Extension granted
	International Business Incentives	Extension granted
	Societies with Restricted Liability	Extension granted
	<b>Export Re-discount Facility</b>	<b>No extension requested.</b>
	<b>Export Credit Insurance Scheme</b>	<b>No extension requested.</b>
	<b>Export Finance Guarantee Scheme</b>	<b>No extension requested.</b>
	<b>Export Grant &amp; Incentive Scheme</b>	<b>No extension requested.</b>
BELIZE	Fiscal Incentives Program	Extension granted
	Export Processing Zone Act	Extension granted
	Commercial Free Zone Act	Extension granted
	Conditional Duty Exemption Facility	Extension granted
BOLIVIA (Annex VII Country)	Free Zone	Reservation of rights. No action taken.
	Temporary Admission Regime for Inward Processing	Reservation of rights. No action taken.
COSTA RICA	Duty Free Zone Regime	Extension granted
	Inward Processing Regime	Extension granted
DOMINICA	Fiscal Incentives Program	Extension granted
DOMINICAN REPUBLIC	Law No. 8-90, to "Promote the Establishment of Free Trade Zones"	Extension granted
EL SALVADOR	Export Processing Zones & Marketing Act	Extension granted
	<b>Export Reactivation Law</b>	<b>No extension requested.</b>
FIJI	Short-Terms Export Profit Deduction	Extension granted
	Export Processing Factories/Zones Scheme	Extension granted
	The Income Tax Act (Film Making & Audio Visual Incentive Amendment Degree 2000)	Extension granted
GRENADA	Fiscal Incentives Act No. 41 of 1974	Extension granted
	Qualified Enterprise Act No. 18 of 1978	Extension granted
	Statutory Rules and Orders No. 37 of 1999	Extension granted

GUATEMALA	Special Customs Regimes	Extension granted
	Free Zones	Extension granted
	Industrial and Free Trade Zones (ZOLIC)	Extension granted
HONDURAS (ANNEX VII COUNTRY)	Free Trade Zone of Puerto Cortes (ZOLI)	Reservation of rights. No action taken.
	Export Processing Zones (ZIP)	Reservation of rights. No action taken.
	Temporary Import Regime (RIT)	Reservation of rights. No action taken.
JAMAICA	Export Industry Encouragement Act	Extension granted
	Jamaica Export Free Zone Act	Extension granted
	Foreign Sales Corporation Act	Extension granted
	Industrial Incentives (Factory Construction) Act	Extension granted
JORDAN	Income Tax Law No. 57 of 1985, as amended	Extension granted
KENYA (ANNEX VII COUNTRY)	Export Processing Zones	Reservation of rights. No action taken.
	Export Promotion Program Customs & Excise Regulation	Reservation of rights. No action taken.
	Manufacture Under Bond	Reservation of rights. No action taken.
MAURITIUS	Export Enterprise Scheme	Extension granted
	Pioneer Status Enterprise Scheme	Extension granted
	Export Promotion	Extension granted
	Freeport Scheme	Extension granted
PANAMA	Export Processing Zones	Extension granted
	Official Industry Register	Extension granted
	<b>Tax Credit Certificates (CAT)</b>	<b>No extension requested.</b>
PAPUA NEW GUINEA	Section 45 of the Income Tax Act	Extension granted

SRI LANKA (ANNEX VII COUNTRY)	Income Tax Concessions	Reservation of rights. No action taken.
	Tax Holidays & Profits Generated	Reservation of rights. No action taken.
	Concessionary Tax on Dividends	Reservation of rights. No action taken.
	Indirect Tax Concessions - Internal Tax Exemptions	Reservation of rights. No action taken.
	Export Development Investment Support Scheme	Reservation of rights. No action taken.
	Import Duty Exemption	Reservation of rights. No action taken.
	Exemption from Exchange Control	Reservation of rights. No action taken.
ST. KITTS & NEVIS	Fiscal Incentives Act	Extension granted
ST. LUCIA	Fiscal Incentives Act	Extension granted
	Micro & Small Scale Business Enterprise Act	Extension granted
	Free Zone Act	Extension granted
ST. VINCENT AND THE GRENADINES	Fiscal Incentives Act	Extension granted
URUGUAY	Automotive Industry Export Promotion Regime	Extension granted

\*All programs for which an extension was requested are permitted a two-year phase-out period after the extension period sanctioned by the Subsidies Committee. If no extension period was approved, Members must phase-out the program in two years.